

# EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

MICHAEL G. VOGT, )  
Individually and on Behalf )  
of All Others Similarly ) No. 16-04170-CV-C-NKL  
Situated, ) June 4, 2018  
Plaintiffs, ) Jefferson City, Missouri  
) CIVIL  
)  
v. ) VOLUME II  
) (Pages 38-218)  
STATE FARM LIFE INSURANCE )  
COMPANY, )  
)  
Defendant. )

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE NANETTE K. LAUGHREY  
SENIOR UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography  
Transcript produced by computer

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1 can you describe for the jury what you mean?

2 A. So in -- on, I believe, January 1st of 2002, State Farm  
3 introduced a new cost of insurance scale that was applicable to  
4 this policy form, and I believe for ages above 30, 30 or 31,  
5 somewhere around in there, the rates were generally lower in  
6 the 2002 scale than they were in the 1994 scale.

7 Q. So there was a reduction in the cost of insurance rates  
8 in 2002?

9 A. Broadly speaking, yes.

10 Q. Before we get to any more detail about that, can you  
11 explain to the jury, what's a pricing mortality table?

12 A. Probably the easiest way to understand that is it is an  
13 expectation of what the life insurance company thinks is going  
14 to happen in the future with respect to mortality. And it's  
15 important for them to use a mortality table that is a -- has  
16 realistic expectations built into it because they use that  
17 table in their pricing to see if they hit their profit targets  
18 and if the policy has been priced appropriately. So the intent  
19 with the pricing mortality table is to make sure that it  
20 appropriately represents your own experience and approximates  
21 the mortality characteristics that you would expect to see from  
22 the group going forward.

23 Q. And you compared those pricing tables, then, to the  
24 cost of insurance rate tables?

25 A. I did. There's one additional complicating factor I

1 should point out just for completeness. To each of those  
2 experience tables, State Farm then applied a factor to convert  
3 the experience mortality table into a pricing mortality table.  
4 And in general it's a percentage that reduces it. Broadly  
5 speaking, those percentages are somewhere between 85 and 100  
6 percent, and they lower the experience mortality table a bit to  
7 come up with the pricing mortality table. So when we talk  
8 about a pricing mortality table, it's actually a product of an  
9 experience mortality table, multiplied by some kind of scalar  
10 to adjust. Oftentimes companies may do it for anticipated  
11 future experience or improvements that have happened during  
12 that lag period from when the study was done to when the  
13 charges were going to be actually levied within the policy.

14 Q. Did you document your work in this case, Mr. Witt?

15 A. I did.

16 Q. Did you prepare a report?

17 A. I did.

18 MR. LYTLE: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. LYTLE: We'll move on. I apologize, Your Honor.

21 BY MR. LYTLE:

22 Q. So in reaching your first opinion that the cost of  
23 insurance rates that State Farm used for the 94030 policy  
24 contained factors in addition to pricing mortality, can you  
25 just describe again for the jury the process you went through

1 to reach that determination?

2 A. Sure. It wasn't a very complicated one. As I said,  
3 just by inspection, I could see that the cost of insurance  
4 rates in many instances were higher than the pricing mortality.  
5 I also noted in one or more of State Farm's own documents that  
6 there was reference to the pricing mortality rates being loaded  
7 for expenses and profit, so, again, it was self-evident that  
8 the cost of insurance rates contained something other than  
9 mortality because State Farm's documents said that they did.

10 MR. LYITTLE: Okay. Your Honor, at this time I would  
11 offer Defendant's 1, which its admissibility has already been  
12 stipulated.

13 THE COURT: It's admitted.

14 (Defendant's Exhibit 1 was admitted into evidence.)

15 BY MR. LYITTLE:

16 Q. Mr. Witt, on the screen there, you'll see the document  
17 that's been marked as Defendant's Exhibit 1. Do you recognize  
18 that document, sir?

19 A. I do.

20 Q. And what is that document?

21 A. This is an actuarial memorandum, and I can tell from  
22 the markings that this is to the State of New Jersey.

23 Q. Is this one of the documents you reviewed in reaching  
24 your opinion that the cost of insurance rates contained factors  
25 in addition to pricing mortality?

1 A. It is.

2 Q. Where in that document, sir -- it might be a little  
3 cumbersome, if you can -- is this one of the documents from  
4 which you identified the pricing mortality that was used?

5 A. It is. Could you -- yeah, keep going. Let me -- so  
6 there's a section there where underneath the mortality where it  
7 shows that --

8 THE COURT: Let me interrupt for just a minute. For  
9 those of you in the jury box, you can pull your screens out and  
10 up so you can see it more easily. Because I know I can't read  
11 this.

12 JUROR: Oh, that looks a lot better.

13 THE COURT: You can get it up and closer to you.  
14 There you go.

15 MR. LYTLE: Your Honor, just to clarify, does Your  
16 Honor need hard copies of the exhibits, or are you also viewing  
17 them on the screen?

18 THE COURT: I'm viewing them, but I would like hard  
19 copies also.

20 MR. LYTLE: You would like hard copies. All right.  
21 We can do that for you. We'll get that taken care of for you,  
22 Your Honor, I apologize.

23 THE COURT: I don't need it right now. I'm able to  
24 see it on the screen now, but I need a stack of them so I can  
25 keep those by me.

1 MR. LYTLE: We will take care of that.

2 BY MR. LYTLE:

3 Q. Mr. Witt, you were looking at this document and  
4 describing what you were seeing there in terms of the mortality  
5 assumption?

6 A. Correct. So this document would be in reference to the  
7 1994 cost of insurance rates that were developed, and within  
8 the section that is underlined mortality, you can see that  
9 there's reference to X percent of the 88-91, and SFL I assume  
10 is State Farm Life. And the 88-91 State Farm Life, I interpret  
11 that to be an experience mortality table. And in order to get  
12 the so-called pricing mortality assumption, a percentage is  
13 multiplied times that table.

14 The document goes on to describe what that  
15 percentage is. It starts off at 85 percent up until age 61,  
16 and then it starts to increase by 1 percent for each age, and  
17 it is then capped at 100 percent.

18 Q. So in doing your analysis, did you rely upon the  
19 mortality assumption as described in this document in selecting  
20 the pricing mortality rate that you used to compare to cost of  
21 insurance rates?

22 A. That was one of the things I relied on.

23 Q. Mr. Witt, you stated earlier that you had documented  
24 your work in this case, correct?

25 A. Correct.

1 benefit. It is that amount, that net amount at risk which is  
2 used as the basis for calculating cost of insurance charges.  
3 So in any given period, you take that net amount at risk. And  
4 you multiply it times the applicable cost of insurance rate,  
5 and that gives you the cost of insurance charges.

6 There's some other little technical aspects to make  
7 things mathematically sound, but at a high level, it's as  
8 simple as that. To determine cost of insurance charges, you  
9 take the stated cost of insurance rate and multiply it times  
10 the net amount at risk.

11 Q. Thank you, Mr. Witt. You mentioned earlier that in  
12 performing your analysis to determine that there were other  
13 factors in addition to those allowed for by the policy and the  
14 cost of insurance rates, you compared the cost of insurance  
15 rates to the pricing mortality rates and that you relied on the  
16 New Jersey actuarial memorandum to select the pricing mortality  
17 rates used in your analysis.

18 What was it about the New Jersey actuarial  
19 memorandum that caused you to rely on that? Why did you rely  
20 on that document, sir?

21 A. Well, in my experience, an actuarial memorandum  
22 provides a description for the underlying pricing, and it was  
23 apparent to me that, not only in the New Jersey memorandum, but  
24 in multiple other places within deposition testimony and  
25 exhibits provided by State Farm, that the pricing mortality for

1 the development of those 1994 cost of insurance rates and then  
2 subsequently the 2002 cost of insurance rates did, indeed,  
3 originate from the pricing mortality tables.

4 Q. And did the New Jersey actuarial memorandum also  
5 confirm the existence of factors other than mortality?

6 A. It did. I believe there was a sentence or two in there  
7 that specifically said that the mortality factors were adjusted  
8 upward for profit and expense loading.

9 Q. And I've got on the screen there, Mr. Witt, Page 3 of  
10 Exhibit D1, under the heading II, compliance with New Jersey's  
11 statutes and regulations. Is that what you're referring to?

12 A. That's part of it. There's a bullet point on the  
13 middle of that page, the second bullet point underneath Roman  
14 Numeral II says, "The current monthly cost of insurance rates  
15 were developed based on our current pricing mortality." So  
16 that was another piece of evidence.

17 Later on near the bottom of that page, it says these  
18 rates were loaded for expenses and profit margins.

19 Q. Is that the language you're referring to there, sir?

20 A. It is.

21 Q. And did that give you some comfort that your conclusion  
22 that the rates included loads for other than or in addition to  
23 mortality was correct?

24 A. Yeah. I mean, really the rest of that investigation  
25 was largely academic. If you have an actuarial memorandum that

1 listing, so there's one row for every single policy. I believe  
2 these policies are listed in chronological order, which should  
3 roughly correspond with when they were issued. So these  
4 policies at the top should be the oldest policies, generally  
5 speaking.

6 And then Column B is the lost account value that I  
7 described previously. So, again, in order to come up with  
8 that, I first replicated the stated account value using State  
9 Farm's own data, and that serves as the base line. And then a  
10 second model was used to recalculate the account value where I  
11 simply substituted in the pricing mortality for the cost of  
12 insurance. And by stripping out the portion of the cost of  
13 insurance rates that are attributable to non-mortality  
14 elements, I was able to then calculate a recalculated account  
15 value. By comparing the recalculated account value with the  
16 original account value, I'm able to determine a lost account  
17 value for each policy, and that value for each policy is what  
18 you see here. There are close to 24,000 rows here.

19 Q. And if we scroll down this page, sir, you've done the  
20 total, correct?

21 A. Correct. So the bottom row with numbers in it there,  
22 you can see that the total lost account value is  
23 \$35,285,901.22.

24 Q. Could you read that for me again, Mr. Witt?

25 A. \$35,285,901.22.

1 Q. What is the -- can you describe for the jury what a  
2 select and ultimate rate is?

3 A. Yeah, when you hear reference to a select and ultimate  
4 table, what it basically means is that a different rate is  
5 being used -- a different mortality rate, or it could be a cost  
6 of insurance rate in some situations, is being used based on  
7 how long it has been since the policyholder has gone through  
8 underwriting. The theory is if you have just recently gone  
9 through underwriting, the company knows more about your health  
10 and future mortality than they would somebody who went through  
11 underwriting ten or twenty or thirty years ago.

12 So if you take a look at a 35-year-old, for  
13 instance, a newly issued -- a 35-year-old who was newly  
14 underwritten and newly issued a policy, if the company  
15 determined that they were a nonsmoker in good health, the  
16 company would have more confidence that that person would  
17 exhibit a relatively low mortality rate than, say, a  
18 35-year-old who bought the policy when they were 20 years old  
19 and it's now been 15 years since they were underwritten.

20 And so the select and ultimate table concept is a  
21 way that enables the insurance company to reflect a more  
22 accurate mortality or cost of insurance rate during that select  
23 period.

24 Q. And in a select and ultimate table, sir, is there a  
25 unique rate for a policyholder of a given age, sex, and rate

1 class for each policy year?

2 A. Yes. There is a different -- there is a different rate  
3 for each policy year based on those characteristics.

4 Q. And would a pooled rate table differentiate -- your  
5 understanding of a pooled rate table that's been talked about  
6 in this case, does that differentiate by policy year, sir?

7 A. It does not.

8 Q. But the pricing mortality tables that you used in this  
9 case were the select and ultimate?

10 A. They are. The first table had a five-year select  
11 period. That was the table that went into the 1994 cost of  
12 insurance pricing. The table that went into the 2002 pricing  
13 had, I believe, a 25-year select period.

14 Q. And also, were there any other issues that you're aware  
15 of that have been raised by State Farm or its experts with your  
16 analysis?

17 A. I'm aware of an issue that I have referred to as a  
18 crossover issue.

19 Q. And can you describe for the jury the crossover issue,  
20 please, sir?

21 A. So the easiest way to understand this is that in my  
22 analysis, my understanding of the theory of damages in my  
23 model, I used the lesser of the cost of insurance rate or the  
24 pricing mortality with the understanding that there were no  
25 damages, there were no -- there was no lost account value in

1 situations where the cost of insurance rate was already below  
2 the pricing mortality.

3 State Farm contends that it should have been a  
4 straight substitution, that instead of using the cost of  
5 insurance rates, the pricing mortality should have been used  
6 across the board in every instance, even in situations where  
7 the cost of insurance rate was lower than the pricing  
8 mortality.

9 Q. And do you know, sir, if State Farm's experts performed  
10 an analysis or calculation to determine the effect that would  
11 have on the damages or the lost account value figures that  
12 you've put forward?

13 A. I am not aware that they have.

14 Q. Did you perform that analysis, sir?

15 A. I did.

16 Q. Did you document that analysis?

17 A. I did.

18 Q. Describe for me the documentation and process.

19 A. So very similar to the exhibit that is on the screen  
20 right now, I created additional exhibits that incorporated  
21 State Farm's contentions. So essentially a what-if scenario,  
22 what if State Farm is right about these various points. And I  
23 prepared three additional exhibits. One addressed the  
24 crossover issue in isolation, one addressed the pooled --

25 Q. Let's stay with just the crossover issue in isolation.

1 Okay, Mr. Witt?

2 A. Oh.

3 Q. And did you prepare that in what we've put together as  
4 Trial Exhibit P242?

5 A. Yes.

6 MR. LYTLE: Your Honor, at this time I would offer  
7 Exhibit P242.

8 MR. ROOT: Same objection to P242 as to 241.

9 THE COURT: All right. I'm going to overrule it on  
10 those grounds.

11 (Plaintiffs' Exhibit 242 was admitted into evidence.)

12 BY MR. LYTLE:

13 Q. Mr. Witt, on the screen there, you'll see Exhibit P242.  
14 Can you describe for the jury what's reflected here?

15 THE COURT: Let's go ahead and take a lunch break.

16 We're a minute from noon, and I know we're going to spend some  
17 time with this, so now is a good time.

18 I want to remind the jury of the instructions I've  
19 previously given you. Don't talk amongst yourselves about the  
20 case or anyone involved with it. If anyone tries to talk to  
21 you about the case, you must report it to me immediately. You  
22 must not do any independent research or talk to anybody outside  
23 the jury pool about the case. I may not repeat these every  
24 time that I take a recess, but you are bound by these rules  
25 throughout the trial.

1 A. I do.

2 Q. And could you again state what your opinion is for the  
3 total lost account value?

4 A. My opinion for this class of policyholders is that the  
5 aggregate lost account value, due to the inclusion of  
6 non-mortality components in the cost of insurance rates and  
7 charges, that lost account value is \$35,285,901.22.

8 Q. And the number of class members?

9 A. That is 23,895.

10 Q. And then immediately before lunch, sir, we were looking  
11 at Exhibit No. 242?

12 A. Yes.

13 MR. LYTLE: And, Your Honor, if I may approach, I've  
14 got Your Honor's copy of the CD for Exhibit 242.

15 THE COURT: Okay.

16 MR. LYTLE: And I also have a copy of D1, which was  
17 admitted earlier.

18 BY MR. LYTLE:

19 Q. And Exhibit 242, sir, that was your summary of lost  
20 account value for the class, accounting for the crossover  
21 effect that you testified about; is that right?

22 A. Yes.

23 Q. And if we scroll down to the bottom there, what is your  
24 opinion with respect to the lost account value to the class,  
25 accounting for the crossover effect?

1 A. If the lost account value is recalculated using State  
2 Farm's contention with respect to the crossover issue, the  
3 aggregate lost account value is \$34,333,495.81.

4 Q. And the class member number, sir?

5 A. It's the same number of class members.

6 Q. And we were also speaking before lunch, sir, about the  
7 pooled rates issue. Do you recall that?

8 A. I do.

9 Q. And did you -- are you aware, sir, whether plaintiffs'  
10 expert calculated the lost account value using the so-called  
11 pooled rates in place of the pricing mortality?

12 A. I'm not aware of that.

13 Q. But you did perform that calculation, didn't you?

14 A. I did.

15 Q. And did you document your calculation, sir?

16 A. I did.

17 Q. How did you document that calculation?

18 A. Similar to the exhibit you see here, I had another  
19 Exhibit D that addressed the pooled mortality issue.

20 Q. And that was the Exhibit P243?

21 A. Correct.

22 MR. LYTLE: Your Honor, at this time I would offer  
23 Exhibit P243.

24 MR. ROOT: Same objection.

25 THE COURT: That's overruled. You may proceed.

1 (Plaintiffs' Exhibit 243 was admitted into evidence.)

2 MR. LYTLE: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. LYTLE:

5 Q. Mr. Witt, on the screen in front of you is Exhibit  
6 P243. Can you please explain to the jury what is reflected in  
7 Exhibit P243?

8 A. This exhibit has the same format as the others we've  
9 looked at, has one row for every policy number, and then a  
10 recalculated lost account value which uses the pooled mortality  
11 that State Farm contends should have been used in lieu of the  
12 nonpooled mortality that I used in my calculation.

13 Q. And if we scroll all the way down to the bottom there,  
14 sir, what is the aggregate lost account value using the  
15 so-called pooled rate?

16 A. \$24,385,346.34.

17 Q. How many cents, sir?

18 A. Thirty-four.

19 Q. How many class members?

20 A. The same number of class members, 23,895.

21 Q. Sir, based on the documents that you've reviewed and  
22 relied upon in reaching your opinion, does it make any sense to  
23 use pooled rates in place of the -- or to compare to the cost  
24 of insurance rates in this case?

25 A. Not based on the documents I've reviewed.

1 Q. Why not?

2 A. They didn't exist in the documents that I reviewed. In  
3 deposition transcripts, deposition exhibits, actuarial  
4 memoranda, spreadsheets supplied by State Farm, one after the  
5 other did not use pooled mortality.

6 Q. And the mortality rates that they did use, is that the  
7 85 percent of the State Farm pricing mortality tables that you  
8 testified about?

9 A. It was -- it started at 85 percent for one of the  
10 experience tables. With the later experience table, the  
11 percentages were different, but those are the tables, yes.

12 Q. And those were select and ultimate tables, correct?

13 A. Yes.

14 Q. Mr. Witt, are you aware -- one of the other  
15 observations made by State Farm's experts is that you didn't  
16 account for -- we talked about the crossover against your  
17 model, and we've talked about running your model with pooled  
18 rates in place of pricing mortality rates. Are you aware, sir,  
19 of whether State Farm's experts did a calculation of lost  
20 account value using, A, pooled rates, and, B, accounting for  
21 the crossover against those pooled rates?

22 A. I saw evidence that they had performed such a  
23 calculation for Mr. Vogt's policy, but I saw no evidence that  
24 the calculation had been performed for the entire class.

25 Q. And you did perform that calculation for the entire

1 the State Farm 88-91 mortality assumption; is that right?

2 A. Part of it. Could you repeat the question? I'm not  
3 sure what you're asking me.

4 MR. ROOT: I'm sorry. Would you mind reading it  
5 back?

6 (The requested portion of the record was read.)

7 A. So one of the assumptions that I had to make was what  
8 does pricing mortality mean with respect to the theory of  
9 damages.

10 BY MR. ROOT:

11 Q. When you use the term pricing mortality, is that a term  
12 you're familiar with in your pricing work as an actuary at  
13 Northwestern Mutual?

14 A. It is.

15 Q. And are you trying in your work to isolate the  
16 component of the cost of insurance that was actually charged by  
17 State Farm to customers that relates to their mortality?

18 A. I am.

19 Q. And what, if any, difference do you make on the basis  
20 of tobacco use among policyholders in your model?

21 A. Tobacco use is incorporated within the mortality on a  
22 blended basis.

23 Q. It's incorporated in the mortality on a blended basis.  
24 Does that mean that smokers and nonsmokers are charged the same  
25 in your model?

1 A. The pricing -- when the substitution is done, I used  
2 the pricing mortality that the evidence suggested, stronger  
3 than suggested, the evidence made it clear was the pricing  
4 mortality that was used, and so I substituted that pricing  
5 mortality into the model. That pricing mortality blended  
6 smoker status.

7 Q. You agree that tobacco use is material to mortality  
8 expectations, right?

9 A. I do.

10 Q. And so a person who smokes or uses tobacco is -- has a  
11 higher mortality risk than a person who doesn't smoke or use  
12 tobacco, right?

13 A. I agree.

14 Q. And Mr. Vogt's policy, which has been, I believe,  
15 introduced into evidence as Defendant's Exhibit 1 --

16 MR. ROOT: Can you pull that up? Defendant's  
17 Exhibit 1 -- I'm sorry, P27A. I apologize. Can you go to Page  
18 3? Not Page 4, Page 3, under schedule of benefits.

19 BY MR. ROOT:

20 Q. Do you see that, Mr. Witt?

21 A. I do.

22 Q. What does it say next to basic amount?

23 A. In parentheses it says, Table 4 rate class, male  
24 non-tobacco.

25 Q. In your work reviewing State Farm's actual cost of

1 Q. Doesn't he have a lower mortality expectation than the  
2 smoker?

3 A. Yes.

4 Q. And so if you're trying to isolate the mortality  
5 component of his charge, why does it make sense to use the same  
6 charge for a smoker and a nonsmoker?

7 A. It makes sense because under the terms of the policy  
8 and the interpretation as I understand it, I was compelled to  
9 use the pricing mortality that State Farm used. So regardless  
10 of what my professional opinions are, it was unambiguous when I  
11 looked through the evidence as to what the pricing mortality  
12 was that State Farm used. And if State Farm used a table that  
13 blended smokers and nonsmokers together, I had no alternative  
14 but to use a blended rate.

15 Q. Could you have used your actuarial judgment?

16 A. I could have.

17 Q. You chose not to do that, right?

18 A. I was not -- that was not the scope of my engagement.

19 Q. Your engagement was not as an actuary?

20 A. I don't view it that way.

21 Q. Let's look at the New Jersey actuarial memoranda. Do  
22 you have that exhibit? It's Defense Exhibit 1. Are you --  
23 you're familiar with actuarial memoranda like this, aren't you,  
24 Mr. Witt?

25 A. I am.

1 insurance rates based on the 88-91 SFL table for male tobacco,  
2 female tobacco, male non-tobacco, and female non-tobacco?

3 A. No.

4 Q. Would those rates be differentiated by the mortality  
5 expectations of the expected policyholders?

6 A. They would.

7 Q. Would those rates be loaded for expenses and profit  
8 margins?

9 A. Eventually they would be.

10 Q. And the way the narrative is described right here,  
11 would they have been loaded yet?

12 A. I don't believe so.

13 Q. And you did not use separate rates for male tobacco and  
14 male non-tobacco in your model.

15 A. Those rates were not available.

16 Q. But you didn't use them.

17 A. I did not.

18 Q. Do you agree with me, sir, that this memorandum  
19 describes the creation of those rates?

20 A. I agree that it describes the creation of them.

21 Q. And did you do anything to understand what those rates  
22 were in your work on this project?

23 A. I searched in vain through all of the provided  
24 documentation and deposition transcripts and exhibits and Excel  
25 spreadsheets provided by State Farm and did not find adequate

1 information to be able to reflect those tables in my work; and,  
2 in fact, I found repeated references and tables that were  
3 blended and described as pricing mortality.

4 Q. Let me ask it a slightly different way. What efforts,  
5 if any, did you make to understand how the mortality assumption  
6 worked in the spreadsheet pricing model that was produced to  
7 you?

8 A. I familiarized myself with it, and, like I said, looked  
9 for -- looked to see if there were tobacco-distinct rates  
10 available, and the preponderance of the evidence in my view was  
11 that those, those -- the pricing mortality table was considered  
12 to be a tobacco-blended table.

13 Q. Do you remember when you gave a deposition in this case  
14 on February 22, 2018?

15 A. I do.

16 Q. And you were under oath at that time?

17 A. I was.

18 MR. ROOT: Casey, can you play 309, 1 through 10?

19 MR. LYITTLE: Objection, Your Honor, improper  
20 impeachment.

21 THE COURT: Sustained.

22 BY MR. ROOT:

23 Q. Did I ask you the same question I asked you today, and  
24 did you give a different answer?

25 A. I don't recall.

1 Q. You're aware that State Farm differentiated based on  
2 tobacco.

3 A. Based on?

4 Q. Tobacco.

5 A. In the development of the cost of insurance rates, yes.  
6 I am aware of that.

7 Q. Did anyone suggest that State Farm didn't differentiate  
8 on the basis of tobacco in developing cost of insurance rates?

9 THE COURT: You can answer that question, and we'll  
10 go back to the other question.

11 A. Okay. I believe in Mr. Streily's deposition and  
12 Mr. Holzbauer's deposition, there was no -- there was ample  
13 opportunity to clarify that blended rates were used, and I  
14 don't believe there was any indication that they were.

15 And to be clear, smoking status is taken into  
16 account in a blended rate. It's a blend between smoking and  
17 nonsmoking.

18 BY MR. ROOT:

19 Q. But Mr. Vogt was charged a lower rate because he's a  
20 non-tobacco user, correct?

21 A. Charged a lower rate in my model?

22 Q. No, by State Farm.

23 A. His actual COI rate was lower than for somebody  
24 similarly situated who would have been a smoker.

25 Q. All right. So all the smokers in the class under your

1 A. In the January 30th report, I did not take into account  
2 face amount increases, so I knew when that report was submitted  
3 that that was an issue that still needed to be addressed.

4 Q. And you subsequently addressed that issue?

5 A. I did. A handful of days later, I was able to complete  
6 that portion of the analysis and supplement the report.

7 Q. When you supplemented the report, it was the \$36.3  
8 million, right?

9 A. That is correct.

10 Q. And that's still been revised to reflect the removal of  
11 folks who are not in the class as defined by the Court to  
12 arrive at your opinion today?

13 A. That is correct. That is correct.

14 Q. And that opinion today is what, again?

15 A. My opinion is that when the non-mortality components  
16 are removed from the cost of insurance rates that State Farm  
17 actually used, the calculation of the lost account value for  
18 the class is \$35,285,901.22.

19 Q. Mr. Witt, you were asked several questions about the  
20 tobacco -- tobacco rates that are used or whether the rates  
21 that you used in your analysis accounted for tobacco use. Do  
22 you remember those questions?

23 A. I do.

24 Q. And do the rates that were used, pricing mortality  
25 rates that you used in your analysis consider tobacco?

1 A. Yes and no. They consider tobacco on an aggregate  
2 basis.

3 Q. And that's a blended rate?

4 A. Correct.

5 Q. But regardless of the blending for tobacco, is it your  
6 understanding, sir, that that's a weighted average of smokers  
7 to nonsmokers?

8 A. That's my understanding.

9 Q. And regardless of the tobacco pooling issue, the  
10 pricing mortality rate table still assigns a specific rate to  
11 each policyholder of the same age and same policy year; is that  
12 right?

13 A. Could you clarify?

14 Q. Sure. In the select and ultimate rate table that you  
15 used for the pricing mortality assumption in your analysis, a  
16 policyholder with an issue age of 54 would have a rate for the  
17 first year, a different rate for the second year, different  
18 rate for the third year, but in the COI rate tables that State  
19 Farm actually charged, every person of age 54 would have the  
20 same COI rate, regardless of the policy year they were in; is  
21 that fair?

22 A. Yeah. I mean, to clarify a little bit more, if you're  
23 talking about a 54-year-old, let's say three different  
24 54-year-olds, one that was issued today, one that was issued a  
25 year ago, and one that was issued two years ago, with a select

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

MICHAEL G. VOGT, )  
Individually and on Behalf )  
of All Others Similarly ) No. 16-4170-CV-C-NKL  
Situated, ) June 6, 2018  
Plaintiffs, ) Jefferson City, Missouri  
) CIVIL  
)  
v. ) VOLUME IV  
) (Pages 371-432)  
STATE FARM LIFE INSURANCE )  
COMPANY, )  
)  
Defendant. )

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE NANETTE K. LAUGHREY  
SENIOR UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography  
Transcript produced by computer

1 class members down here who get zero. And if you look at  
2 Exhibit 243, we've calculated -- just like I showed you on 241,  
3 this one shows what every person would get in the state of  
4 Missouri if you applied pooled rates. And I submit that it's  
5 not plaintiffs setting a high bar hoping you'll go lower, it's  
6 defendants hoping that you'll ignore Mr. Witt's testimony,  
7 you'll ignore his analysis, which was based exclusively on  
8 State Farm's data, to discount.

9 That's the only reason we're here. It's your --  
10 it's their hope that you will not give full damages to the  
11 class as some sort of compromise. Don't do it. Don't do it.  
12 People will get zero. It's only -- if you apply this  
13 crossover, which I'll talk about in a minute, it's 29 people.  
14 That's the number of people we're talking. It's not a lot.  
15 But if you look at the zeros -- this is 242. If you look at  
16 the zeros at 243, this goes up to several hundred or hits a  
17 thousand. And what they're doing there --

18 COURTROOM DEPUTY: What are you wanting to use?

19 MR. SIEGEL: This pad. This iPad thing. There we  
20 go. It's there.

21 So I showed you this in my portion of the closing.  
22 What they're trying to do is say, you know what, even though we  
23 were obligated to charge a mortality-only rate, we want the  
24 jury to think that that rate was somehow pooled. And remember  
25 one other critical thing if you want to talk about house of